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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**-oOo-**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GABRIEL MESA,

Defendant.

2:13-cr-00418-APG-VCF

GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO  
REOPEN DETENTION HEARING  
(Doc. #18)

COMES NOW the United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and Cristina D. Silva, Assistant United States Attorney, and responds in OPPOSITION to the *Defendant's Motion to Reopen Detention Hearing* (Doc. #18) filed on March 21, 2014, by defendant GABRIEL MESA, by and through his attorney, Assistant Federal Public Defender Monique Kirtley. The defendant has failed to present any new, material facts that would justify reopening his detention hearing.

**I. RELEVANT PROCEDURAL HISTORY**

On November 19, 2013, a Federal Grand Jury returned a criminal indictment charging the defendant, Gabriel Mesa, with four counts of *Possession of a Firearm by a Convicted Felon*, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and one count of *Possession of a Firearm With a Removed Serial Number*, in violation of 26 U.S.C. §§ 5842, 5861(h), and 5871. Doc. #1. The defendant is a two time convicted felon, having been convicted in 1994 conviction, in the State of

1 Nevada, for one count of Attempted Murder (Felony) and one count of Illegal Discharge of a  
2 Firearm (Felony), and in 2004, in the State and Federal District of Nevada, for one count of Felon in  
3 Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2) (Case  
4 No. 2:03-cr-00196-HDM-LRL). *Id.*

5 Defendant Mesa appeared before Magistrate Judge George W. Foley, Jr., on November 22,  
6 2013, for his initial appearance and detention hearing. At the conclusion of the hearing, the  
7 defendant was detained as a risk of appearance and as a danger to the community. *See* Doc. #11,  
8 Detention Order Pending Trial at pg. 2. On March 21, 2014, by and through his counsel, Assistant  
9 Federal Public Defender Monique Kirtley, Mesa filed a *Motion to Re-Open Detention Hearing*.  
10 Doc. #18. The Government files this timely response opposing the re-opening of the defendant's  
11 detention hearing.

## 12 II. SUMMARY OF RELEVANT FACTS

13 The charges in the indictment arose from an undercover operation by the Bureau of Alcohol,  
14 Tobacco, Firearms, and Explosives (ATF). The Government provides a summary of the facts  
15 related to each count in the indictment as follows.

### 16 A. COUNT ONE: Possession of a Firearm by a Convicted Felon - October 3, 2012

17 On October 3, 2012, a confidential information ("CI") made arrangements to purchase two  
18 firearms from defendant Gabriel Mesa. *See Exhibit 1*, Report of Investigation Number 4 at 1. A law  
19 enforcement agent, acting in an undercover capacity (hereinafter "UC-1") drove with a confidential  
20 informant (hereinafter "CI") to defendant's residence, where the CI purchased two firearms and  
21 numerous rounds of ammunition for \$800.00. *Id.* at 2. The firearms were subsequently identified as  
22 a black Springfield model XD, a .45 caliber semi-automatic pistol containing serial number  
23 US707256, and a black Heckler and Koch, a .45 caliber semi-automatic pistol containing serial  
24 number 25096092. *Id.*

1           **B. COUNT TWO: Possession of a Firearm by a Convicted Felon – October 16, 2012**

2           On October 16, 2012, the CI made arrangements to purchase another firearm from the  
3 defendant. *See Exhibit 2*, Report of Investigation Number 5 at 1. UC-1 then drove the CI to  
4 defendant's residence, where defendant brought an item from inside his house and handed the item  
5 to the CI, who then passed it to UC-1 for safekeeping inside the UC's vehicle. *Id.* at 2. The item  
6 was later identified as a Bulldog Pug Revolver, a .33 caliber firearm with serial number 77333. *Id.*  
7 The CI paid \$160.00 for the firearm. *Id.* A records check of the firearm revealed it had previously  
8 been reported stolen. *Id.* at pg. 2.

9           **C. COUNT THREE: Possession of a Firearm by a Convicted Felon – November 1, 2012**

10           On November 1, 2012, the CI made arrangements to purchase additional firearms from  
11 defendant. *See Exhibit 3*, Report of Investigation Number 8 at 1. UC-1 then drove the CI to  
12 defendant's residence and both the UC and the CI entered the residence. *Id.* at pg. 2. After  
13 negotiating with defendant, the UC was able to purchase three firearms for \$2,300.00. *Id.* The  
14 firearms included a semi-automatic Springfield model XD40, a .40 caliber pistol with serial number  
15 XD509660, a Universal Firearms Corporation model M1, a .30 caliber semi-automatic rifle with  
16 serial number 79472, and a Double Star Corporation model Star15, an AR-15 style semi-automatic  
17 rifle with serial number D0008205. *Id.* During the same transaction, Mesa provided the undercover  
18 agent with speed loaders for the AR-15, and an extended magazine for the Springfield .40 caliber.  
19 *Id.* at pg. 3. All three firearms were previously reported stolen. *Id.*

20           **D. COUNTS FOUR AND FIVE: Possession of a Firearm by a Convicted Felon and Possession of a Firearm with an Obliterated Serial Number– December 19, 2012**

21           On December 19, 2012, UC-1 contacted defendant and made arrangements to purchase  
22 firearms. *See Exhibit 4*, Report of Investigation Number 16 at 1. UC-1 then drove to defendant's  
23 residence and purchased five firearms. *Id.* at 2. The firearms were later identified as follows: a  
24

1 Kahr Arms PM9, a 9mm pistol with an obliterated serial number; a Hipoint C9, a 9mm pistol with  
 2 serial number 1531687; a Jennings J22, a .22 caliber pistol with serial number 1011981; a  
 3 Masterpiece Arms unknown model, a 9mm pistol with serial number F8032; and an Intratec  
 4 TECDC9, a 9mm pistol with serial number D075233. *Id.* A subsequent analysis of the firearms  
 5 revealed the Kahr Arms had an obliterated serial number. *Id.* at pg. 2. Moreover, the Hipoint 9mm  
 6 had previously been reported stolen. *Id.*

### 7 **III. ARGUMENT**

8 On a motion for pretrial detention, the Government bears the burden, by clear and convincing  
 9 evidence, to show that the defendant is a danger to the community, and by a preponderance of the  
 10 evidence, to show that defendant is a flight risk. *See United States v. Gebro*, 948 F.2d 1118, 1121  
 11 (9th Cir. 1991). 18 U.S.C. § 3142(g) specifies the various factors that must be considered in  
 12 determining whether there are conditions of release that will reasonably assure the appearance of the  
 13 person and the safety of the community. These factors are:

14 (1) the nature and seriousness of the offense charged . . . (2) the weight of the  
 15 evidence against the person . . . (3) the history and characteristics of the  
 16 person, including – (A) the person's character, physical and mental condition,  
 17 family ties, employment, financial resources, length of residence in the  
 18 community, community ties, past conduct, history relating to drug or alcohol  
 19 abuse, criminal history, and record concerning appearance at court  
 proceedings; and (B) whether, at the time of the current offense or arrest, the  
 person was on probation, on parole, or on other release pending trial,  
 sentencing, appeal, or completion of sentence for an offense under Federal,  
 State, or local law; and (4) the nature and seriousness of the danger to any  
 person or the community that would be posed by the person's release.

20 18 U.S.C. § 3142(g). Here the Government met that burden and the defendant was  
 21 appropriately detained. *See generally* Doc. #11.

22 It is the Government's position that the Court did not err in finding that the defendant was  
 23 both a danger to the community and a risk of non-appearance at his November 22, 2013 detention  
 24 hearing. The facts of the charged crimes reveal that the defendant repeatedly sold firearms to a

1 confidential information and/or an undercover agent. The sales involved numerous firearms, which  
2 ranged from handguns to semi-automatic rifles, to a firearm with an obliterated serial number.  
3 Further, at the time the defendant engaged in this criminal conduct he had been a convicted felon for  
4 well over 20 years and was there aware of the fact that he was not allowed to possess firearms, much  
5 engage in the sale of firearms. In fact, the defendant has previously been charged with Felon in  
6 Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2) in this  
7 District (Case No. 2:03-cr-00196-HDM-LRL).

8 Title 18, United States Code Section 3142(f) provides that in order for the defendant to  
9 request the re-opening of a detention hearing, there must be new information which was “. . . not  
10 known to the movant at the time of the hearing and that has a material bearing on the issue whether  
11 there are conditions of release that will reasonably assure the appearance of such a person as  
12 required and the safety of any other person and the community.” *Id.* While the defendant has  
13 provided information his family ties to the community, the Government asserts that this information  
14 is not new. Rather the Court considered in family ties when ordering his detention. *See* Doc. #11 at  
15 pg. 2. Further, the information that was provided about a new potential job and home foreclosure  
16 does not rise to the level of being “material,” and is therefore is insufficient to warrant a re-opening  
17 of defendant’s detention hearing. As a result, the Government respectfully requests that the  
18 defendant’s *Motion to Re-Open Detention Hearing* be denied.

19 The information provided in defendant’s Motion is insufficient to disturb Magistrate Judge  
20 George W. Foley’s determination that the defendant is both a risk of flight and a danger to the  
21 community. The Court properly weighed the nature and seriousness of the crime instant case with  
22 the defendant’s criminal history; a history that demonstrates the defendant fails to appear when  
23 ordered to do so and is also violent. The Court also properly weighed the information regarding the  
24 defendant’s family ties, employment history, financial history, and history of substance abuse (which

1 includes daily consumption of alcohol and prior abuse of methamphetamine). The record  
2 demonstrates that the defendant has limited employment history, and substance abuse issues. There  
3 is ample support for the Court's finding that the defendant is both a risk of flight and a danger to the  
4 community. As a result, the Court did not err in detaining the defendant pending trial.

#### 5 IV. CONCLUSION

6 The Government asserts that defendant has not made a sufficient showing of new, material  
7 information to justify the re-opening of his detention hearing. Therefore, the defendant's request to  
8 re-open his detention hearing should be denied. Even if this Court permits the defendant to re-open  
9 his detention hearing, the Court properly detained defendant based on all the evidence in this case,  
10 the defendant's criminal history, and the lack of information regarding his family ties, employment  
11 history, or financial resources. As a result, the United States respectfully requests that the Court  
12 deny defendant's request to re-open his detention hearing, and to maintain the defendant's pre-trial  
13 detention.

14 DATED this 1st day of April, 2014.

15 Respectfully submitted,

16 DANIEL G. BOGDEN  
17 United States Attorney

18  
19 //s//  
20 CRISTINA D. SILVA  
21 Assistant United States Attorney  
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## CERTIFICATE OF SERVICE

## Electronic Case Filing

DATED: April 1, 2014